

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

FRANK JAMES EDWARDS)	
)	
v.)	Civil Action No. 2:07cv171-MEF
)	
UNITED STATES OF AMERICA)	

UNITED STATES' RESPONSE TO SHOW CAUSE ORDERS
(DOCUMENTS 7 AND 8)

Comes now the United States of America by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, and in response to this Court's Orders, Documents 7 and 8, submits the following:

On February 26, 2007, the defendant, Frank James Edwards, filed a "Motion for Judicial Notice Rule 201 of the Federal Rules of Criminal Procedures, under Title 18 U.S.C.

§3553(a)(1)(2)(A) Extraordinary and Compelling Reasons for Sentence Reduction." (Doc. 1). In the Court's Order dated February 28, 2007, Edwards' motion was construed to be a motion under 28 U.S.C. § 2255. (Doc. 4), pursuant to Castro v. United States, 540 U.S. 375 (2003). In the same Order, the Court ordered the United States to "file a response to Edwards' motion within thirty (30) days from the date of [the] order."

The undersigned Assistant United States Attorney represented the United States in the criminal prosecution against Edwards, United States v. Frank James Edwards, 2:04cr00008-MEF. However, the undersigned counsel was not included on the docket sheet when the above civil case was opened in the Clerk's office. The docket sheet indicates that a copy of the order was placed in the United States Attorney's box.¹ The undersigned counsel never received notice

¹ Assistant United States Attorney ("AUSA") John T. Harmon's name is listed on the docket sheet. However, AUSA Harmon did not receive a copy of the Court's order, and

of the defendant's filings or the Court's Order, Document 4. Therefore, the United States did not submit a response to defendant's motion for relief under 28 U.S.C. § 2255.

On June 5, 2007, the Court ordered the United States to (a) "show cause why he has failed to file a response addressing the claims in Petitioner's § 2255 motion in compliance with the court's order entered on March 29, 2007, (Doc. No. 4), and (b) file with the court and provide to Petitioner a response addressing the claims in the § 2255 motion." (Doc. 6). Again, the undersigned counsel did not receive the Court's order since her name was not on the docket sheet as representing the United States. Moreover, it appears that the Court may have directed the Order to Mr. Harmon since the Court stated "show cause why he..." had not responded.

On August 20, 2007, the Court again ordered the United States to show cause why it had not responded to the Court's previous two orders. (Doc. 7). On September 4, 2007, the Court's clerk, Monica Stump, inquired about the status of the responses telephonically. It was on this date that the undersigned was notified of the Petitioner's motion for relief under 18 U.S.C. § 2255, and the Court's previous orders (Docs. 4, 6 and 7).

The United States respectfully submits that its failure to respond to the Court was not the result of negligence. Instead, the undersigned had no notice that the Petitioner had filed a motion nor the Court's orders to respond.

The undersigned counsel has reviewed the file and determined that Petitioner Edwards entered his guilty plea on May 24, 2004, (Court Reporter, Sherry Mack), and was sentenced on August 31, 2004, (Court Reporter, Jimmy Dickens). The United States will need these transcripts in order to properly respond to Petitioner's claims. The transcripts were requested on _____
would have forwarded it to AUSA Hardwick, had he received it.

this date, September 5, 2007.²

The United States respectfully requests thirty (30) days from the date the last transcript is received to file its response to Petitioner's motion for relief.

Respectfully submitted on this 5th day of September 2007.

Respectfully,

LEURA G. CANARY
UNITED STATES ATTORNEY

/s/Tommie Brown Hardwick
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ASB4152 W86T

² Risa Entrekin was contacted to assist in preparing the sentencing hearing record taken by Jimmy Dickens. Ms. Entrekin has advised the United States Attorney's Office that it may take additional time to respond to the United States' request since the case is three years old. Further, she will have to locate Mr. Dickens' records on this case. The office of Dunn, King, & Associates, where Court Reporter Sherry Mack works, also indicated that it may take additional time to locate and produce the change of plea transcript because of the passage of time.

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CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and mailed, postage prepaid, a copy to Frank James Edwards, Reg. #1135-002, USP-McCreary, P.O. Box 3000, Pine Knot, KY 42635.

Respectfully submitted,

/s/Tommie Brown Hardwick
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